

Notice of Allowability

Application No.

10/612,986

Applicant(s)

SABELLE ET AL.

Examiner

Rebecca L. Anderson

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the reply filed 21 November 2005.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 2/17/05, 7/7/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Claims 1-26 are currently pending in the instant application and appear allowable over the prior art of record.

Election/Restrictions

Applicant's election with traverse of Group II in the reply filed on 21 November 2005 is acknowledged. The traversal is on the ground(s) that there is no serious burden for search. This is not found persuasive because the each group is directed to subject matter, which require different searching strategies for each group. Moreover, the examiner must perform a commercial database search on the subject matter of each group in addition to a paper search, which is quite burdensome to the examiner.

However, upon reconsideration and as requested by applicant on page 4 of the remarks filed 21 November 2005, the restriction requirement is withdrawn and all groups are examined together.

Therefore, the restriction requirement as set forth in the Office action mailed on 22 July 2005 is hereby withdrawn. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claims including all the limitations of an allowable product claim or process claim are presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance. This invention relates to compounds of the formula (I), dye compositions comprising the compound of the formula (I), a process for the oxidation dyeing of keratin fibers by utilizing the compound of the formula (I) and a multi-compartment device containing the compound of the formula (I). The novel and nonobvious aspect of this invention involves the substituent R₂ of the compound of the formula (I) which is a 3- to 7-membered saturated and unsaturated carbocycle or heterocycle and which may be substituted with at least one radical chosen from C₁-C₆alkyl and C₁-C₆ hydroxyalkyl. The closest prior art of record is US Patent No. 6,946,005, which discloses compounds wherein the position equivalent to applicants' R₂ must be an onium radical (a nitrogen-based quaternary radical of the formula (II)(III) or (IV)) or X-C=NR₈-NR₉R₁₀. The position equivalent to applicants' R₂ is substituted with a cationic radical in the prior art of US Patent No. 6,946,005, which fails to teach or suggest applicants instant R₂ which is a 3- to 7-membered saturated and unsaturated carbocycle or heterocycle and which may be substituted with at least one radical chosen from C₁-C₆alkyl and C₁-C₆ hydroxyalkyl.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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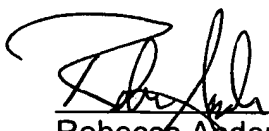
Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday 5:30AM to 2:00PM.

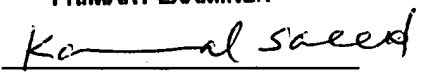
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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2/17/06

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